



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DERRY EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

Complainant

v.

DERRY COOPERATIVE DISTRICT/
SCHOOL BOARD, et al

Respondent

CASE NO. T-0223:9

DECISION NO. 85-25

APPEARANCES

Representing Derry Education Association, NEA-New Hampshire

Marc Benson, UniServ Director, Region IV

Representing Derry Cooperative District/School Board, et al

Robert Leslie, Esq., Counsel

Also in Attendance

Dave Brown, Derry School District, Supt.
Francine Bourgault, Derry Education Assoc.
Cary Grant, Derry Education Assoc.
Bev Skinner, Derry Education Assoc.
Colleen Bovi, Derry Education Assoc.
Ron Dion, Derry Education Assoc.

BACKGROUND

On July 9, 1984, the Derry Education Association/NEA-New Hampshire filed improper practice charges against the Derry Cooperative District/School Board individually and collectively charging that the School Board has violated RSA 273-A:5, I (e), (h) and (i). The Association charged that in May of 1984, the Derry Cooperative School Board violated RSA 273-A in the following particular manner:

- (1) That the Derry Education Association, NEA-NH has standing aforementioned complaint since it is the exclusive bargaining agent for all professional employees except those specifically excluded in Article 1-02 of the agreement between the Association and the School Board.

- (2) That coordinators are and have been a part of the bargaining unit as defined in Article 1 of the agreement between the Association and the School Board.
- (3) That on May 8, 1984, the School Board voted to modify the terms and conditions of employment for coordinators in the Derry Cooperative School District.
- (4) That during bargaining for the 1984-1987 agreement, the School Board accepted without discussion or reservation, a proposal by the Association for change in the method of payment for coordinators. The change included a stipend of \$1100 per annum "plus per diem rate for any and all extended contracts".
- (5) That at no time during the above mentioned negotiations did the School Board propose, discuss, indicate or imply that there would be a subsequent unilateral change in other terms and conditions of employment for coordinators.
- (6) That by their actions cited in Paragraph 5, the School Board failed to negotiate in good faith with the exclusive representative of the bargaining unit, thereby in violation of RSA 273-A:5, I (e) particularly.
- (7) The unilateral change in the terms of conditions of employment for the coordinators, adversely affects their salaries and benefits in the following manner:
 - (a) Salary - three of the coordinators have had their length of contract reduced thus adversely affecting their salary.
 - (b) Benefits - coordinators will not be allowed use of sick or personal leave during the days beyond the 185-day teacher contract.
 - (c) Extended days - the number of additional days beyond the 185-day teacher contract while stated in the individual coordinator's contract may be altered by the administration. Because of the flexibility in the new contract for extended days, coordinators are now prevented from seeking other gainful employment to compensate for loss in pay or otherwise make plans for the summer months.
 - (d) Method of payment - payment for additional days beyond 185 was uniformly included as a part of the regular 26 pay periods. Coordinators will now be paid separate checks for the additional days work beyond the 185-day teacher contract.
 - (e) Contracts - the issue of separate annual extended contracts may serve to divest coordinators of their property of interest in full employment.
- (8) That the School Board, by unilaterally changing the terms and conditions of employment for coordinators, has violated past practice and breached Article 23 in the agreement with the Association, thereby violating RSA 273-A:5, I (h).
- (9) That by adopting the rules and regulations pertaining to coordinators, the School Board violated the meaning and intent of Article 23 of the agreement with the Association for 1984-1987 thereby violating RSA 273-A:5, I (i).

In its answer to the Public Employee Labor Relations Board, the Derry Cooperative School District/School Board states the following:

- (1) The School Board agrees that the Derry Education Association is the exclusive bargaining representative for all the professional employees in the Unit.

- (2) Admits that the coordinators are a part of the bargaining unit as defined in Article 1 of the agreement between the parties.

However, the School Board denies that the School Board voted to modify the conditions of employment for coordinators in the Derry School District. The Derry School Board admits that it did agree to the inclusion in their current agreement of the paragraph stipulating a stipend of \$1100 per annum and "the plus per diem rate for any and all extended contracts". The School Board also agrees that they did not at any time during the negotiations discuss, indicate or imply that there would be a subsequent unilateral change in any terms of conditions of employment for coordinators. The School Board denies that any of their actions constitute a failure to negotiate in good faith with the exclusive representative of the bargaining unit. Further, with respect to the charge that the School Board has unilaterally changed the terms of conditions of employment for coordinators, the School Board's response is as follows:

- (a) In terms of salary, the contract does not require the School District to employ coordinators beyond the regular work year of 185 days;
- (b) As far as benefits are concerned, the contract does not require the School District to pay for sick or personal leave for days worked beyond the 185-day teacher year;
- (c) As far as extended days are concerned, coordinators are not required to work during the summer months;
- (d) As far as the method of payment is concerned, per diem paid for coordinators was negotiated for the first time in the current agreement. Per diem pay is paid at the next payday following the performance of the work.
- (e) As far as the issuance of separate annual extended contracts, the School Board denies that they are required to do so.

The School Board further denies that any of its actions taken are violative of either Article 23 or a past practice of the School District or in any way a violation of RSA 273-A.

Subsequent to the filing of its answer, the School Board filed a motion to dismiss with Public Employee Labor Relations Board, arguing that the collective bargaining agreement between the parties includes a grievance procedure which results in binding arbitration. The School Board also notes that the facts and circumstances upon which this complaint is based have previously been the subject of a former grievance and on July 2, 1984 the Derry Education Association made a formal demand for arbitration to the American Arbitration Association and the subject matter of this complaint is now within the jurisdiction of the American Arbitration Association. Indeed, in subsequent filings to the Public Employee Labor Relations Board, the School Board notified the Public Employee Labor Relations Board that the arbitrator had issued a ruling on December 24, 1984 that the School Board did not violate Article 23 of the collective bargaining agreement or any past practice and also filed a copy of the award with the Public Employee Labor Relations Board.

A hearing was held at the Public Employee Labor Relations Board's office in Concord, New Hampshire on January 31, 1985 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At the hearing before the Public Employee Labor Relations Board, the Board decided to hear arguments on the motion to dismiss and to take as its first charge a ruling on that motion. Subsequent argument revealed that there were no disputes on the facts of the matter, that both parties agreed on the essential elements as stated in the background to this decision.

The School Board argued that this case should be taken care of by reference to the grievance process or to appeals under other sections of RSA but not to the Public Employee Labor Relations Board since the contract provides for binding arbitration and interpretations of the contract.

The Association argued that the Public Employee Labor Relations Board has original jurisdiction on the grounds that RSA 273-A:5, I (e) requires the parties to negotiate in good faith and that regardless of what the arbitrator decided on the breach of contract question, the School Board did make a unilateral change in the working conditions of employees and therefore was obliged to negotiate with the teacher's association.

The issue before the Public Employee Labor Relations Board in this case is: (1) Whether or not the Association has a right to appeal to the Public Employee Labor Relations Board given the fact that the breach of contract matter was taken to arbitration and that the contract contains a binding arbitration provision. RSA 273-A is clear and gives jurisdiction to the Public Employee Labor Relations Board for certain matters among which are failure to bargain in good faith. If the Association has reason to believe that the School Board has failed to bargain in good faith, it can definitely appeal to the Public Employee Labor Relations Board regardless of whether or not matters are in arbitration. This would also be the case if, for instance, the School Board refused to follow the arbitrator's award in a case where the contract contains a binding arbitration clause. It's clear therefore that the Public Employee Labor Relations Board and the arbitration process are not necessarily one and the same. However, where the binding arbitration process has resulted in a interpretation of the contract, which does not involve a interpretation of RSA 273-A, then the Public Employee Labor Relations Board would be reluctant to continue with that case depending as we would be on the outcome of the arbitration process to decide interpretations of the contract.

(2) The second issue facing the Public Employee Labor Relations Board, in this case, is whether or not having decided that there was no breach of contract, the management is in any way required to negotiate the impact of the changes it made, since the circumstances of "wages and other conditions of employment" have changed. It is the view of the Public Employee Labor Relations Board that the School Board is obliged to negotiate with the Association the impact of its managerial decision to reduce the hours of the coordinators, despite the fact that the arbitrator has ruled in favor of the School Board that the contract was not breached. The ensuing impact of the management decisions is a mandatory subject of bargaining since it will affect "conditions of employment".

DECISION AND ORDER

The decision of the Public Employee Labor Relations Board is that the motion to dismiss will be granted. The issue has been fairly resolved with respect to the binding arbitration process and the arbitrator has determined that there has been no breach of contract by the School Board. If and when there is a refusal to negotiate the impact of those decisions, then this Board will, of course, be asked to respond but there has been no such allegations as yet in this case and therefore the Board declines to rule on that question.

Motion to Dismiss granted.



A handwritten signature in black ink, appearing to read "Robert E. Craig", is written over a horizontal line.

ROBERT E. CRAIG, CHAIRMAN

Signed this 2nd day in April, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Russell Hilliard and Richard Roulx present and voting. Also present, Evelyn C. LeBrun, Executive Director.